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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RON WILLIAMS, derivatively on Behalf of
AFFIRM HOLDINGS, INC.

Plaintiff,

v.

MAX LEVCHIN, et al.,

Defendants,

-and-

AFFIRM HOLDINGS, INC.,

Nominal Defendant.

CASE NO. 3:22-cv-05300-VC

**JOINT STIPULATION AND [PROPOSED]
ORDER TO STAY DERIVATIVE ACTION**

Judge Vince Chhabria
Courtroom 4 – 17th Floor

1 Plaintiff Ron Williams and Defendants¹ (collectively, the “Parties”) jointly submit this
2 Stipulation to temporarily Stay the above-captioned derivative action (this “Stipulation”), and in
3 support thereof state as follows:

4 WHEREAS, Plaintiff filed an action captioned *Williams v. Levchin, et al.*, No. 4:22-cv-
5 05300-VC purportedly in the right, and for the benefit of Affirm against Individual Defendants for
6 alleged violation of Section 14(a) of the Exchange Act of 1934 (“Exchange Act”), breach of fiduciary
7 duties, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and
8 against Defendant Levchin for contribution under Section 10(b) and 21D of the Exchange Act;

9 WHEREAS, pending in the United States District Court for the Northern District of California
10 is a putative securities class action captioned *Toole v. Affirm Holdings, Inc.*, Civil Action No.: 3:22-
11 cv-01243-VC;

12 WHEREAS, also pending in the United States District Court for the Northern District of
13 California is a shareholder derivative action captioned *Vallieres v. Levchin, et al.*, No. 3:22-cv-
14 020507-VC, which is related to *Toole*;

15 WHEREAS, the *Williams* action is related to *Vallieres* (Dkt. No. 16);

16 WHEREAS, the *Vallieres* action is stayed pursuant to a Joint Stipulation and Order pending
17 final adjudication the defendants’ motion to dismiss the related *Toole* action;

18 WHEREAS, there is an apparent overlap between the facts and circumstances alleged in the
19 *Toole*, *Vallieres*, and *Williams*, including the potential relevance of many of the same documents and
20 witnesses;

21 WHEREAS, the defendants in the *Vallieres* and *Williams* actions are identical, except for
22 Jeremy Philips who is not a defendant in *Vallieres*;

23 WHEREAS, the Court granted the motion to dismiss the *Toole* action on September 28, 2022
24 with leave to amend within 21 days of the Order;

25
26 ¹ Defendants refer collectively to Defendants Max Levchin, Michael Linford, Jeremy Liew, Libor
27 Michalek, Jenny J. Ming, Jeremy Philips, Christa S. Quarles, Keith Rabois, Jacqueline D. Reses, and
28 James D. White (“Individual Defendants”) and Nominal Defendant Affirm Holdings, Inc.

1 WHEREAS, in order to ensure economy of time and effort for the Court, for counsel, and for
2 litigants, the Parties have agreed that, in light of the apparent overlap between the facts alleged in the
3 *Toole, Vallieres, and Williams* actions and that the outcome of the anticipated motion to dismiss in
4 *Toole* may inform the proceedings in *Williams*, that the *Williams* action should be temporarily stayed
5 on the terms set forth below unless and until : (1) the *Toole* action is dismissed with prejudice, and
6 all appeals related thereto have been exhausted; (2) a motion to dismiss in *Toole* is denied; or (3)
7 either of the Parties to this Stipulation gives a ten (10) day notice that they no longer consent to the
8 voluntary stay of the *Williams* action.

9 WHEREFORE, the Parties, through their undersigned counsel, hereby agree, stipulate, and
10 respectfully request that the Court enter an order as follows:

- 11 1. Defendants hereby accept service of the complaint filed in the *Williams* action.
- 12 2. The *Williams* action shall be stayed upon the Court's endorsement of this Stipulation
13 as an Order of the Court.
- 14 3. Defendants shall promptly notify Plaintiff upon becoming aware of any other
15 derivative actions or threatened derivative actions, including, but not limited to, Section 220 demands
16 or litigation demands that appear in Defendants' good faith judgment to be related to the *Williams*
17 action.
- 18 4. The Parties agree that if the plaintiff in any related derivative action refuses to agree
19 to a stay under similar terms, Plaintiff may lift the agreed stay upon ten (10) days' notice in writing
20 to the undersigned Counsel for Defendants via email.
- 21 5. The Parties agree that during the pendency of the stay pursuant to this Stipulation,
22 Defendants shall inform Plaintiff promptly upon the scheduling of any mediation or settlement
23 negotiation with the plaintiff in *Toole*. In the event that Defendants are unable for any reason to
24 include Plaintiff in the mediation with plaintiff in *Toole*, then Defendants agree to mediate with
25 Plaintiff in *Williams* at or about the same time. The Parties further agree that Defendants shall inform
26 Plaintiff promptly upon the scheduling of any mediation or settlement negotiation with any other
27 derivative plaintiffs, including in the *Vallieres* action, who have asserted claims substantially similar
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1 to the claims asserted by Plaintiff in this case, and shall include Plaintiff in any such mediation or
2 settlement negotiation.

3 6. The Parties agree that notwithstanding this Stipulation, Plaintiff may file an amended
4 complaint; however, Defendants need not answer or otherwise respond to the Complaint or to any
5 other complaint or amended complaint that is filed in or consolidated with the above-captioned action
6 during the pendency of this stay.

7 7. In the event that Defendants agree to produce, or any of them are ordered to produce
8 by a court of competent jurisdiction, any documents in *Toole* or in any related derivative litigation,
9 including *Vallieres*, or pursuant to any shareholder demand for an inspection of books and records
10 on behalf of Affirm, then copies of such documents shall be provided to Counsel for Plaintiff within
11 ten (10) days of such production, subject to the execution by Plaintiff of a reasonable confidentiality
12 agreement governing the use and disclosure of these materials.

13 8. Upon occurrence of: (1) the dismissal of the *Toole* action with prejudice by the Court,
14 and exhaustion of all appeals related thereto; (2) the denial of any motion to dismiss the *Toole* action
15 in whole or in part; or (3) either of the Parties to this Stipulation has given a ten (10) day notice that
16 they no longer consent to the voluntary stay of the *Williams* action, then within seven (7) days of the
17 occurrence of any such event or the expiration of the 10-day notice period, counsel for the Parties
18 shall meet and confer and jointly submit a proposed schedule for the filing of an amended complaint,
19 if any, and Defendants' response thereto, and all associated briefing. Defendants are not otherwise
20 required to move, answer, or otherwise respond to any complaint.

21 9. In the event that Defendants agree to terms or conditions in connection with any
22 stipulation, agreement, or motion to stay a related derivative action that are more favorable to the
23 plaintiff(s) therein, those more favorable terms or conditions shall be deemed incorporated into this
24 Stipulation.

25 10. The Parties to this *Williams* action are not waiving any rights, claims, or defenses of
26 any kind, and no part of this stipulation shall be construed as a waiver of any rights, claims, or
27 defenses.

1 Dated: October 24, 2022

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3 **THE ROSEN LAW FIRM, P.A.**

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FILER’S ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3) regarding signatures, I hereby attest that concurrence in the filing of the document has been obtained from all of the signatories above.

Date: October 24, 2022

/s/ Michael D. Celio
Michael D. Celio

* * *

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: _____

HONORABLE VINCE CHHABRIA